

**TAX CREDIT ASSISTANCE PROGRAM AGREEMENT BY AND BETWEEN
ARKANSAS DEVELOPMENT FINANCE AUTHORITY AND**

This Agreement (the "Agreement") is entered into this ____ day of _____, 2009, by and between the Arkansas Development Finance Authority (hereafter designated as "ADFA") and _____ (hereafter designated as "Owner").

WHEREAS, on June 24, 2009, ADFA received Tax Credit Assistance Program (hereafter designated as the "TCAP Program") funding (hereinafter "TCAP Funds") from the United States Department of Housing and Urban Development (hereinafter designated as "HUD"); and

WHEREAS, Owner has evidenced the capacity to construct (acquire and rehabilitate) an affordable housing Development, named "_____", (hereafter "the Development") funded in part by this Agreement, located at:

WHEREAS, pursuant to Section 42(h) of the Internal Revenue Code, Owner received an award of annual federal low-income housing tax credits on May 17, 2007 (May 15, 2008) (September 10, 2009) (September 17, 2009) in the amount of \$_____ for the construction (acquisition/rehabilitation) of the Development consisting of a total of _____ (____) housing units, of which _____ (____) will be income-restricted and rent-restricted pursuant to Section 42 of the Internal Revenue Code ("IRC"). "Award" is defined, for purposes of this Agreement, as the ADFA Board of Directors' public announcement that the Development has been selected as eligible to receive an allocation of federal low-income housing tax credits.

WHEREAS, Owner applied on _____, 2009, for TCAP Funds as a financing source for the Development. On August 20, 2009, the ADFA Board of Directors awarded Owner _____ Dollars (\$_____) in TCAP Funds to construct (acquire and rehabilitate) (rehabilitate) _____ (____) multi-family units for rent, of which _____ (____) will be income-restricted and rent-restricted pursuant to Section 42 of the IRC and otherwise subject to all restrictions set forth by 26 U.S.C. Section 42 and accompanying legislation, including but not limited to all applicable regulations, revenue rulings, revenue procedures, and all further restrictions agreed to by Owner.

NOW THEREFORE, ADFA and Owner hereby execute this Agreement to undertake the described affordable housing Development.

FURTHERMORE, ADFA and Owner agree as follows:

I. SCOPE OF SERVICE

- A. Owner shall complete the construction (acquisition and rehabilitation) (rehabilitation) of _____ (____) multi-family rental units located at _____, AR, more particularly described in "*Exhibit A*" (hereinafter the "Development"). _____ (____) of the _____ (____) units will be tax credit-qualified units and will accordingly be reserved for low-income tenants who are income eligible and otherwise eligible under Section 42 of the Internal Revenue Code.

- B. Owner shall construct (acquire and rehabilitate) (rehabilitate) the ____ (____) multi-family units identified above to standards required in Section V of this Agreement in conformance with all representations made by Owner and Owner's architect.
- C. ____ (____) units in the Development will be Section 504 accessible.
- D. ____ (____) units will be Energy Star qualified units.
- E. Owner shall affirmatively market ____ (____) affordable housing units for rent to eligible tenants.

Owner will develop and maintain ____ (____) low-income housing units. Owner elects the following minimum set-aside election:

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At least 40% of the total housing units (exclusive of the designated number of manager/employee units) will be reserved for households that have an annual gross income equal to or less than 60% of the area median income for the area, as determined by HUD, adjusted for family size and otherwise eligible under Section 42 of the IRC

OR

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At least 20% of the total housing units (exclusive of the designated number of manager/employee units) will be reserved for households that have an annual gross income equal to or less than 50% of the area median income for the area, as determined by HUD, adjusted for family size and otherwise eligible under Section 42 of the IRC

Including the requisite number of units to meet the minimum set-aside elected above, Owner commits to reserve the following number of units in the Development for the indicated income level:

	30% AMI	50% AMI	60% AMI	Unrestricted (Market rate)	Manager/ Employee Units	Total Units
Number of Units						

- F. The term "Section 42 of the IRC," throughout this Agreement, shall mean 26 U.S.C. Section 42, all amendments thereto, all regulations promulgated there-under and all guidance issued by the Internal Revenue Service, Department of Housing and Urban Development, and the U.S. Department of Treasury.
- G. Owner must comply with the Qualified Allocation Plan that was in effect in the year that Owner was awarded federal low-income housing tax credits; however, if Owner has returned tax credits in exchange for an allocation of 2009 tax credits and/or Section 1602 funds, the 2009 Qualified Allocation Plan is applicable and controlling.
- H. Owner shall not make a request for payment, *i.e.* "Draw Request," of TCAP Funds for payment of any costs incurred at any time prior to the occurrence of both the pre-

construction conference and ADFA's issuance of a Notice to Proceed. Owner shall request payment from the awarded TCAP Funds only for costs certified as constituting "eligible costs", including costs of land acquisition, on-site demolition costs, and hazardous material remediation costs, as defined by TCAP legislation, Section 42 of the IRC, regulations and agency guidance (hereinafter "eligible costs").

"Eligible basis" does not include the increase in basis (commonly referred to as the 30% "basis boost") allowed pursuant to Section 42(d)(5) of the IRC. Eligible costs do not include any costs expended on any casino or other gambling establishment, aquarium, zoo, golf course or swimming pool.

With each Draw Request, Owner shall provide to ADFA: (1) original receipts and invoices for all eligible costs incurred or expended for which payment is sought; (2) a cost certification of eligible costs, prepared by its Certified Public Accountant or attorney, (3) written statement of inspection by an authorized representative of ADFA; and (4) a "Jobs Reporting" form. ADFA will provide the "Draw Request" and "Jobs Reporting" forms that are to be completed and submitted by Owner.

Payment by ADFA of TCAP Funds in response to a Draw Request does not in any way constitute a finding by ADFA that the submitted costs constitute "eligible costs" nor does such disbursement constitute a waiver of ADFA's right to seek repayment of the disbursed amount, in whole or in part, in the event that the costs, or any part of the costs, are at any time deemed to not constitute eligible basis or otherwise ineligible.

- I. Owner shall adhere to the detailed construction schedule attached hereto as **"Exhibit B."** This construction schedule establishes construction activities and expenditure timelines that Owner certifies it will meet under this Agreement. At a minimum the construction schedule shall address construction activities that meet the following expenditure timelines:
 1. Owner shall incur or expend 25% of the total TCAP Funds awarded for eligible costs within 90 days of the date ADFA issues a "Notice to Proceed" to Owner. In the event that Owner does not incur or expend said percentage within said time, Owner agrees to deposit an amount equal to 25% of its total developer fee, which is defined as developer fee plus developer's overhead and profit plus consultant fees (hereafter "developer fee"), into an escrow account held by a third-party, approved by ADFA. Owner agrees that the amount placed in escrow pursuant to this subsection will be payable in equal annual installments to Owner for fifteen (15) years with the first payment of escrow due to Owner one (1) year after date that the last building within the Development is placed in service. Owner agrees that all disbursements from the escrow account will require prior approval in writing from ADFA. All interest and dividends and other similar income earned on the amount placed in escrow pursuant to this Subsection is program income and accordingly must be paid to ADFA. Owner shall be responsible for the full amount of all fees, costs and other expenses of the creation and maintenance of the escrow account. Owner shall ensure that ADFA is named on the escrow account as a lienholder and is provided with copies of all documents submitted by Owner to the escrow company and submitted by the escrow company to Owner.
 2. Owner shall incur or expend 50% of the total TCAP Funds awarded for eligible costs within 180 days of the date ADFA issues the "Notice to Proceed" to Owner. In the event that Owner does not incur or expend said

percentage within said time, Owner agrees to deposit an amount equal to 50% of its total developer fee into an escrow account held by a third-party approved by ADFA. Any deposit required under Subsection I.1. above shall not decrease the total developer fee for purposes of the calculation of funds required to be deposited into an escrow account. However, the amount of deposit required under Subsection I.1. may be taken into account in determining the amount of deposit required under this Subsection. Owner agrees that the amount placed in escrow pursuant to this Subsection will be payable in equal annual installments to Owner for fifteen (15) years with the first payment of escrow due to Owner one (1) year after the date that the last building within the Development was placed in service. Owner agrees that all disbursements from the escrow account will require prior approval in writing from ADFA. All interest and dividends and other similar income earned on the amount placed in escrow pursuant to this subsection is program income and accordingly must be paid to ADFA. Owner shall be responsible for the full amount of all fees, costs and other expenses of the creation and maintenance of the escrow account. Owner shall ensure that ADFA is named on the escrow account as a lienholder and is provided with copies of all documents submitted by Owner to the escrow company and submitted by the escrow company to Owner.

3. Owner shall incur or expend 75% of the total TCAP Funds awarded for eligible costs within 270 days of the date ADFA issues the "Notice to Proceed" to Owner. In the event that Owner does not incur or expend said percentage within said time, Owner agrees to deposit an amount equal to 75% of its total developer fee into an escrow account held by a third-party approved by ADFA. Any deposit required under Subsection I.1. and Subsection I.2. above shall not decrease the total developer fee for purposes of the calculation of funds required to be deposited into an escrow account. However, the amount of deposit required under Subsection I.1. and Subsection I.2. may be taken into account in determining the amount of deposit required under this Subsection. Owner agrees that the escrowed amount will be payable in equal annual installments to Owner for fifteen (15) years with the first payment of escrow due to Owner one (1) year after the last building within the Development was placed in service. Owner agrees that all disbursements from the escrow account will require prior approval in writing from ADFA. All interest and dividends and other similar income earned on the amount placed in escrow pursuant to this subsection is program income and accordingly must be paid to ADFA. Owner shall be responsible for the full amount of all fees, costs and other expenses of the creation and maintenance of the escrow account. Owner shall ensure that ADFA is named on the escrow account as a lienholder and is provided with copies of all documents submitted by Owner to the escrow company and submitted by the escrow company to Owner.
4. Owner certifies it shall incur or expend 100% of the total TCAP Funds awarded for eligible costs by November 15, 2010. In the event that Owner does not incur or expend 100% of the total TCAP Funds awarded for eligible costs by November 15, 2010, Owner forfeits any and all claim to the remaining, undisbursed amount of the TCAP funding awarded to Owner pursuant to this Agreement, and Owner agrees to repay ADFA the total of all TCAP Funds previously disbursed to Owner and waives all claims it may have to any funds placed in escrow under the foregoing Subsections.

5. Owner certifies it shall place the Development in service no later than December 31, 2011.
- J. No part of the developer fee may be paid, from any source of funds, until all disbursements of all TCAP Funds and Section 1602 funds awarded to the Development have been disbursed.

II. PROJECT FUNDING

- A. ADFA hereby approves the award of TCAP Funds in the amount of _____ Dollars (\$_____) to the Owner as owner of the Development. Owner's current contact information is set forth in Section VI, infra.
- B. Owner shall provide a detailed budget, acceptable to ADFA, indicating usage of all funds in the Development budget, including but not limited to the TCAP Funds awarded under this Agreement. Attached hereto as "**Exhibit C**" is Development's Final Sources and Uses Statement, which includes the total project Development costs, total amount of TCAP Funds, total federal low-income housing tax credit equity, and all other sources of funds.
- C. Owner shall ensure that TCAP Funds provided under this Agreement will be requested for payment only in required amounts and as needed for payment of eligible costs. The amount requested cannot exceed actual costs incurred, meaning, they cannot be placed in escrow accounts or advanced prior to actually incurring or expending the amount requested. Funds will be disbursed by ADFA for only eligible costs incurred or expended by Owner, and will not exceed actual cash requirements. ADFA reserves the right to liquidate funds available under this Agreement for eligible costs incurred by ADFA on behalf of Owner.
- D. Owner shall not utilize disbursed TCAP Funds for payment of any costs other than those costs specified in the draw request and certified by Owner's Certified Public Accountant or attorney as constituting eligible basis.

Owner shall make its accounting records, including but not limited to all computerized accounting systems, invoices, and reports, available for review by ADFA and ADFA's agent(s) at any time.

- E. Owner shall complete the Development, including all acquisition, rehabilitation and new construction, and place the Development in service as defined by Section 42 of the IRC and accompanying legislation, regulations and agency guidance, by December 31, 2011. If any federal low-income housing tax credits were allocated to the Development in any year other than 2009, Owner certifies that it will comply with all placed-in-service requirements under Section 42 of the IRC for the appropriate allocation year. In the event that the Development is not placed in service by the earlier of the time required under Section 42 of the IRC, Owner shall forfeit all TCAP Funds awarded to Owner pursuant to this Agreement and shall repay to ADFA all TCAP Funds disbursed to Owner pursuant to this Agreement.
- F. TCAP Funds provided under this Agreement will be in the form of a repayable loan, as evidenced by a Promissory Note ("Note"), at zero percent (0%) interest for a term of years corresponding to the affordability period to which Owner has committed herein. Loan repayments will begin three years after the date the Development has been placed in service and shall be payable in monthly installments in an amount equal to one half (1/2) of Owner's monthly Surplus Cash not to exceed the monthly amount due as set forth in the

Promissory Note. "Surplus Cash" shall mean the operating income of the Owner's Development which exceeds operating expenses. "Operating expenses" shall include salaries of on-site property managers, management fees, developer's fee, accounting services, loan repayments, amounts deposited into a replacement account, travel expenses, legal services, insurance expenses, taxes, advertising, grounds maintenance, utility expenses, office supplies, rental (not purchase) and maintenance of office space, each of which must be specifically related to the Development. All accrued and unpaid principal shall be due on the Maturity Date set forth in the Promissory Note. Owner shall provide to ADFA annual audited financial statements of the Development from which ADFA can determine the Owner's Surplus Cash as defined herein. Failure to submit such annual audited financial statement will convert the Promissory Note from a note payable based upon "Surplus Cash" into a note payable in equal monthly payments as set forth in the Promissory Note.

- G. The Note shall be secured by a Mortgage, Security Agreement, Assignment of Rents and Profits, Fixture Filing and Financing Statement encumbering the Development in favor of ADFA. The Note shall be subordinated to the notes of other parties providing financing for the Development. The entire outstanding principal balance of the loan shall be due and payable upon sale of the Development or any portion thereof during the applicable affordability period, except that subsequent purchasers of the Development may be approved by ADFA, provided that the subsequent purchaser agrees to: 1) enter into an agreement with ADFA to own and operate the Development as affordable rental housing for the remaining term of the affordability period, and 2) abide by all applicable TCAP Program and Section 42 of the IRC requirements.
- H. If for any reason, Owner breaches any term of this Agreement, ADFA is entitled to require full repayment of any amounts advanced under this Agreement pursuant to Section X, Remedies on Default, and pursue any and all other remedies available to it under this Agreement, federal law, state law, and any and all other agreements between Owner and ADFA.
- I. TCAP Funds to be provided under this Agreement are contingent upon ADFA's determination to proceed, modify or cancel the project based on the results of an environmental review in accordance with HUD CPD Notice 01-11 and CPD-09-03 Revised. Owner shall not commence, or continue, any acquisition, rehabilitation or new construction of the Development until ADFA has completed its environmental review, HUD has issued to Owner an Authority to Use Grant Funds, and ADFA has issued to Owner a Notice to Proceed.

III. AFFORDABILITY

- A. All housing developed with funding provided under this Agreement shall be affordable and available to low-income persons as defined within this Agreement for a period of _____ (____) **years**, (the affordability period). The affordability period begins on the first day of the "Compliance Period", as that term is defined at 26 U.S.C. § 42(i)(1), for any building in the Development.
- B. If the Development does not meet the applicable affordability requirements for the full affordability period for any reason whatsoever, the total amount of TCAP Funds disbursed to the Owner pursuant to this Agreement must be repaid to ADFA.

- C. Owner shall ensure that the affordability requirements are met for the full affordability period through deed restrictions and all other necessary documentation and mechanisms. At a minimum, affordability requirements shall be enforced by ADFA via a deed restriction encumbering the Development for the full affordability period. Prior to any payment of TCAP Funds, Owner shall cause a Land Use Restriction Agreement (“LURA”), approved and executed by ADFA and Owner, to be filed in the real property records of the County in which the Development herein is located. Such Land Use Restriction Agreement must be binding on all owners, and successors and be enforceable by ADFA, HUD and residents of the Development. Further, all requirements of this Agreement shall be enforceable by such Land Use Restriction Agreement.

IV. ASSET MANAGEMENT

- A. All asset management duties will be performed by a third-party asset management company, approved by ADFA, (hereinafter “Asset Manager”), which will report to ADFA.
- B. Owner agrees to cooperate fully with the Asset Manager and ADFA in providing all requested information, developing and maintaining policies required by the Asset Manager and ADFA and all other activities and responsibilities to ensure that the Asset Manager and ADFA have full and complete access to all financial records of the Owner, the Development and all related persons and entities. Owner agrees that it will implement and maintain all policies, practices and actions that are required by the Asset Manager and ADFA for the operation of the Development to ensure the long-term viability of the Development, including but not limited to establishment of rent amounts, establishment, maintenance and amount of operating and replacement reserves, selection and utilization of property management personnel and companies, refinancing of debt, and restructuring of debt and equity.
- C. Owner shall be liable for the payment of all fees, costs and expenses charged by the Asset Manager for its asset management services provided to the Development. Owner shall not utilize TCAP Funds to pay for such asset management fees, costs and expenses in whole or in part.
- D. Owner shall establish a Replacement Reserves account with an initial balance of two hundred and fifty dollars (\$250.00) per unit in the Development, including all restricted units, all market rate units and all manager/employee units. Owner must make annual deposits throughout the affordability period to the Replacement Reserve account in the amount of \$250.00 per unit in the Development. All withdrawals from this account or payments made from this account must be pre-approved by the Asset Manager and ADFA. The balance of the Replacement Reserve account may not at any time be less than the total of two (2) years deposits calculated as set forth above. A copy of the bank account statement evidencing the monthly balance of the operating reserve funds account must be provided to the Asset Manager on a monthly basis.
- E. Owner shall establish an operating reserves account with an initial balance of not less than the sum of six (6) months of:
1. Annual operating expenses as represented in Owner’s pro forma financial statement;
 2. Annual debt service payments; and
 3. Annual replacement reserve deposits.

Owner must maintain such an account throughout the compliance period. All withdrawals

from this account or payments made from this account must be pre-approved by the Asset Manager and ADFA. A copy of the bank account statement evidencing the monthly balance of the operating reserve funds account must be provided to the Asset Manager on a monthly basis.

The Operating Reserve account must be replenished to the amount set forth above within six (6) months of any withdrawal. Owner must provide the Asset Manager with evidence of such replenishment by the earlier of 1) ten business days after the date of the last deposit which increased the Operating Reserves account to an amount equal to the amount set forth above, or 2) the tenth business day of the seventh month after the date of the withdrawal. This requirement shall apply separately to each and every withdrawal from the Operating Reserve account.

- F. Owner shall provide within five (5) business days any and all information, records, documentation and reports requested by ADFA or the Asset Manager.
- G. Owner shall maintain property hazard insurance for the Development in an amount sufficient to rebuild the Development in the same manner and quality as promised by Owner in exchange for the TCAP Funds. Owner shall cause ADFA to be named on the insurance policy as Mortgagee. ADFA is in no manner responsible for payment of the insurance premiums, notifying Owner of premiums due, notifying Owner of any other correspondence received by ADFA in regard to the insurance policy, or any other action or fiduciary duty. Owner understands that ADFA is not Owner's escrow agent and that Owner and ADFA have no fiduciary relationship. It is exclusively the Owner's responsibility to ensure that the Development is sufficiently insured at all times. ADFA has the right to purchase property hazard insurance for the Development and recover all costs for such insurance and the expense of obtaining such coverage from Owner. However, ADFA has no duty to perform this service.

Owner shall maintain liability insurance for bodily injury and automobiles owned, leased, or operated by Owner. Owner shall maintain insurance coverage for flood damage if the Development is located in the 100-year flood plain (FEMA Flood Zone A or any sub-designation of Zone A).

Owner must maintain workers compensation insurance in accordance with all applicable Arkansas law.

Owner must deliver Certificates of Insurance on an annual basis to ADFA and the Asset Manager evidencing all coverage and coverage limits provided to Development.

V. UNIFORM PHYSICAL CONDITION STANDARDS

- A. The Development shall, upon completion: 1) meet all representations made by Owner in its application(s) for receipt of funding, including TCAP funding, from ADFA; 2) meet or exceed all applicable minimum design standards, as established by ADFA; 3) all federal and state accessibility requirements; 4) Fair Housing requirements, and any applicable local, state, and national building codes. In addition, all housing units in the Development shall be maintained in compliance with all applicable minimum design standards, as established by ADFA, all applicable federal regulations, and all state and local housing, zoning, fire, and building codes, as amended, for the duration of the required affordability period.

- B. Owner shall establish and maintain records for each housing unit in the Development, to ensure adherence to all applicable minimum design standards, as established by ADFA, all applicable federal regulations, and all state and local housing, zoning, and building codes, as amended. Prior to processing any periodic draw requests under this Agreement, the Owner's compliance with all such standards will be verified by an inspection conducted by the construction monitor or an ADFA inspector. The method of inspection to ensure maintenance of required housing standards for the full period of affordability will be in accordance with [24 CFR 92.504\(d\)\(1\)](#).
- C. ADFA will perform construction monitoring during construction until the Development receives a certificate of occupancy from the local, applicable governmental unit. **Owner must notify ADFA a minimum of 48 hours in advance to schedule construction inspections.** Owner must fully cooperate with ADFA to facilitate construction inspections, reviews, and reporting requirements. No payment of TCAP Funds will be approved and no TCAP Funds will be disbursed to Owner until completion of all periodic reviews, inspections and reports are performed by or submitted to ADFA as set forth in the construction schedule established for the Development in *"Exhibit B"*. *"Exhibit B"* must, at a minimum, identify construction inspections in accordance with the following stages of construction:

Stage 1

Excavation
Footing and/or foundation reinforcement bar and wire mesh
Termite treatment
Rough-in plumbing
Earth Work
Water proofing (vapor barrier)
Footing
Slab

Stage 3

Flooring systems
Painting
Doors
Cabinets
HVAC
Electrical top-out
Special construction (elevators, etc.)
Appliances

Stage 2

Plumbing
Electrical rough-in
Framing
Roof
Interior wall systems
Exterior wall systems
Ventilation
Insulation

Stage 4

Final Inspection

- D. ADFA and all agents of ADFA reserve the right to inspect at any time during normal business hours any and all construction or rehabilitation accomplished under this Agreement to assure adherence to applicable Uniform Physical Condition Standards, ADFA's minimum design standards, all applicable federal laws and regulations, and all state and local housing, zoning, building and fire codes, as amended.
- E. Owner shall use only Arkansas licensed contractors and subcontractors, reputable workmen, material suppliers and agents acceptable to ADFA in the construction, rehabilitation, marketing, and leasing of the housing units to be rehabilitated and/or constructed under this Agreement.

VI. NOTICES

Communication and details concerning this Agreement shall be directed to the following persons:

Arkansas Development Finance Authority
Multi-Family Housing Programs Manager
P.O. Box 8023

Little Rock, AR 72203
(501) 682-5900

<input type="text"/>	Name of Owner
<input type="text"/>	Contact Person
<input type="text"/>	Address of Owner
<input type="text"/>	Telephone Number of Owner
<input type="text"/>	Facsimile Number of Owner
<input type="text"/>	E-mail of Owner

The contact persons listed above may be changed upon fifteen (15) days' written notice to the other party.

VII. ADMINISTRATIVE REQUIREMENTS

- A. Owner shall abide by all applicable federal, state, and local laws, regulations, codes, and ordinances in the performance of all activities required by this Agreement, and specifically agrees to adhere to applicable requirements of 26 U.S.C. § 42 and all accompanying legislation, regulations, Internal Revenue Service guidance, HUD Notice CPD-09-03, as amended, all interpretative guidance issued by HUD and all regulations promulgated by HUD.
- B. Owner shall cause an independent audit of this Development to be performed within thirty (30) days of placing the Development in service. This audit shall be in accordance with generally accepted accounting principles and generally accepted auditing principles. An independent auditor acceptable to ADFA shall conduct the audit. The independent auditor shall provide ADFA with a copy of such audit upon its completion. Any deficiencies noted in the audit report shall be fully cleared by Owner within thirty (30) calendar days after receipt of the audit report by ADFA. Failure of Owner to clear deficiencies noted in the audit report shall constitute a breach of this Agreement and ADFA may exercise any and all of its rights and remedies under Section VIII, Remedies on Default.
- C. Owner shall ensure compliance with the requirements of Title VII of the Civil Rights Act of 1968, [42 U.S.C. § 3601 et seq. \(Fair Housing Act\)](#), and implementing regulations at [24 CFR Part 100](#) and the regulations at [24 CFR Part 107](#) (Equal Opportunity in Housing). Owner shall ensure that the provisions of this paragraph are included in every subcontract entered into by Owner associated with this Agreement and Development. Owner shall ensure maintenance of records and reports to document compliance with fair housing and equal opportunity requirements.
- D. Owner shall comply with **Title VI of the Civil Rights Act of 1964**, [42 U.S.C. § 2000\(d\)](#) (Nondiscrimination in Federally Assisted Programs), as amended, and implementing regulations at [24 CFR Part 1](#), as amended.
- E. Owner shall comply with **The Age Discrimination Act of 1975**, [42 U.S.C. §§ 1601 – 1607](#) (Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance), as amended, and implementing regulations at [24 CFR Part 146](#), as

amended.

- F. Owner shall **affirmatively market** all housing units developed under this Agreement to low-income persons in compliance with Public Laws 88-352 and 90-284 and ensure maintenance of documentation of affirmative marketing efforts to such persons. Prior to any funds being disbursed under this Agreement, Owner shall submit an affirmative marketing plan to ADFA documenting the planned affirmative marketing efforts to be undertaken by Owner regarding the Development. Affirmative marketing efforts detailed in the Owner's affirmative marketing plan must include:
1. Methods for informing the public and potential tenants about fair housing laws and the policies of the local program;
 2. A description of what the Owner will do to affirmatively market housing units in the Development;
 3. A description of what the Owner will do to inform persons not likely to apply for housing without special outreach;
 4. Maintenance of records to document actions taken to affirmatively market housing units in the Development and to assess marketing effectiveness; and
 5. A description of how efforts will be assessed and what corrective actions will be taken when requirements are not met.
- G. Owner shall comply with **Section 504 of the Rehabilitation Act of 1973**, [29 U.S.C. § 794](#), as amended, and implementing regulations at [24 CFR Part 8](#) (Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development), as amended.
- H. Owner shall comply with the provisions of the **National Environmental Policy Act of 1969**, as applicable to the Development, the Flood Disaster Protection Act of 1973, and the regulations promulgated thereunder, all as amended as applicable, in particular [24 CFR § 58.6](#). Owner agrees to comply with the following regulations insofar as they apply to this Agreement, the Clean Air Act, Federal Water Pollution Control Act, Environmental Protection Agency regulations pursuant to [40 CFR Parts 1 - et seq.](#), all as amended, as well as all other applicable environmental laws and regulations, as applicable. Owner shall ensure maintenance of documentation to evidence compliance with environmental statutes and regulations.
- I. Owner shall comply with **The Lead-Based Paint Poisoning Prevention Act** and **The Residential Lead-Based Paint Hazard Reduction Act of 1992** and implementing regulations at [24 CFR Part 35](#). In addition, Owner shall have knowledge of and comply with HUD's "[Interpretative Guidance on Lead-Based Paint for Tax Credit Assistance Program](#)" and "[Lead Safe Housing Rule for Target Housing](#)." Owner shall complete the following certifications:
1. _____ Owner certifies that the Development was constructed after 1977 and is accordingly exempt from the Lead Safe Housing Rule.
 2. _____ Owner certifies that the Development was constructed prior to 1978 and that no executed construction contract existed for the rehabilitation of the Development at the time that HUD and ADFA executed the TCAP grant agreement. Owner further certifies that it will comply with all applicable rules and regulations, including but not limited to all pre-contract requirements set forth in 24 C.F.R. Part 34, Subpart A, Subpart B, Subpart J, Subpart K, and Subpart R and HUD's Interpretive Guidance on Lead-Based Paint for Tax Credit Assistance Program.

3. _____ Owner certifies that the Development was constructed prior to 1978 and that an executed construction contract existed for the rehabilitation of the Development at the time that HUD and ADFA executed the TCAP grant agreement. Owner further certifies that it will comply with all applicable rules and regulations, including but not limited to all post-contract requirements set forth in 24 C.F.R. Part 34, Subpart A, Subpart B, Subpart J, Subpart K, and Subpart R and HUD's Interpretive Guidance on Lead-Based Paint for Tax Credit Assistance Program.
 4. _____ Owner certifies that it will not use TCAP Funds to pay any costs of complying with 24 CFR Part 35, other than for costs of lead hazard evaluation, lead hazard reduction, and clearance activities.
- J. Owner shall ensure that it will comply with all requirements of the **Davis-Bacon Act**, [40 U.S.C. § 3141 et seq.](#), [Contract Work Hours and Safety Standards Act](#), the [Copeland Anti-Kickback Act](#), and all other applicable federal, state, and local laws and regulations pertaining to labor standards. Owner will further ensure that all contractors, subcontractors, and any other construction employer performing construction services for the Owner will comply with all requirements of the **Davis-Bacon Act**, [Contract Work Hours and Safety Standards Act](#), the [Copeland Anti-Kickback Act](#), and all other applicable federal, state, and local laws and regulations pertaining to labor standards.
1. Owner certifies it will insert and incorporate the applicable [Davis-Bacon Wage Decision](#) and the [HUD 4010](#), "Federal Labor Standard Provisions", into any construction contract in which it enters that is subject to Davis-Bacon requirements. Owner certifies that it will ensure any construction contract entered into by any contractor, subcontractor or other construction employer performing construction services for the Owner will include and incorporate the applicable Davis-Bacon Wage Decision and the HUD 4010 into such construction contract. Owner certifies it will retrieve the appropriate Davis-Bacon Wage Decision at <http://www.wdol.gov/>. A copy of HUD 4010 is attached hereto at "**Exhibit D**" and is incorporated herein by reference.
 2. Owner shall ensure maintenance of adequate records and reports to evidence compliance with all requirements of the **Davis-Bacon Act**, 40 U.S.C. § 3141 et seq., [Contract Work Hours and Safety Standards Act](#), the [Copeland Anti-Kickback Act](#), and all other applicable federal, state, and local laws and regulations pertaining to labor standards.
 - a. Owner will ensure each contractor, subcontractor and any other construction employer performing construction services for the Owner will: *i*) prepare and certify a weekly payroll report for each week the contractor, subcontractor or other construction employer that performs construction services on the Development, and *ii*) retain a copy of all payrolls and basic records related to the payroll information such as employee information, timecards, pay and deduction records, etc.
 - b. Owner will ensure payroll reports and records enumerated in subparagraph J.2.a., immediately above, are, on a weekly basis, cumulatively submitted up the "chain of command" until final submission to ADFA. (Up the "chain of command" means that lower-tier subcontractors will submit payroll reports and records to subcontractors; subcontractors will submit lower-tier subcontractor payroll reports and records along with their own payroll reports and records to the principal contractor; the principal contractor will

submit all lower-tier subcontractor and subcontractor payroll reports and records along with its own payroll reports and records to the Owner. The Owner will submit all lower-tier subcontractor, subcontractor, principal contractor payroll reports and records along with its own payroll reports and records to ADFA.

- c. Owner will receive a certification from each construction employer, at whatever level described in subparagraph J.2.b. that performs construction services on the Development that it will retain the payroll reports and records enumerated in subparagraph J.2.a. for a period not less than three (3) years after the Development has placed in service.
 3. Owner shall monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance. Owner shall cause the applicable provisions of this Agreement to be included in, and made a part of, any subcontract executed in the performance of this Agreement. Executed copies of all subcontracts entered into by Owner shall be available for review by ADFA, along with documentation concerning the selection process.
 4. Owner shall provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988.
 5. Owner shall ensure that where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, said employees shall not be required or permitted to work, be trained in, or receive services in buildings or surroundings, or under working conditions, which are unsanitary, hazardous, or dangerous to the participants' health or safety.
- K. Owner certifies that it will comply with the requirements of [24 CFR Part 87](#). Owner further certifies that:
1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement; and
 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form-LLL](#), "Disclosure Form to Report Lobbying," in accordance with its instructions.
 3. The language of the "Certification for Contracts, Grants, Loans, and Cooperative Agreements," attached hereto as "**Exhibit E**" will be included in the award documents for all contracts, including subcontracts, made pursuant to this Agreement. The language of the "Certification" is a material representation of fact, thus, Owner will ensure all principal contractors, subcontractors, and lower-tier subcontractors will execute said "Certification" prior to making any payment for services rendered for the benefit of the Development.

- M. Owner shall not award any contract to a contractor who is debarred, suspended or otherwise excluded from or ineligible for participation in any federal assistance program. *See*, <https://www.epls.gov/>. Owner must comply with [subpart C of 2 CFR Part 180](#) as required by [2 CFR Part 2424](#).

Owner shall require and ensure that all contractors, sub-contractors, and all other persons performing work under contracts funded in any part by TCAP Funds, Exchange Funds, or other funds provided under the American Recovery and Reinvestment Act, register with www.FederalReporting.gov and report on the use of the funds in accordance with 74 Federal Register 42877 and 74 Federal Register 48971.

- N. Owner shall ensure that project signage for the Development is posted in a manner consistent with criteria established for projects funded in whole or in part with TCAP funds and any other American Recovery and Reinvestment Act funds.
- O. If applicable, Owner shall adhere to the requirements of [OMB Circular No. A-122](#), [OMB Circular No. A-133](#), [OMB Circular No. A-110](#), and [24 CFR Part 84](#).
- P. Owner shall make available to ADFA at any time during normal business hours all financial, compliance and rehabilitation records of activities pertaining to funding the Development covered by this Agreement to allow ADFA to conduct monitoring, performance, and compliance reviews and evaluations. Notwithstanding any other provision in this Agreement, ADFA will monitor the performance of Owner against the activities described in this Agreement. Substandard performance as determined by ADFA shall constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by Owner within thirty (30) calendar days after being notified by ADFA, suspension or termination procedures may be initiated as specified in Section IX, X, and XI.
- Q. Owner shall establish and ensure the eligibility of tenants leasing housing developed under this Agreement with regard to program requirements specified by the Department of Housing and Urban Development, the United States Treasury and the Internal Revenue Service. In addition, Owner shall ensure maintenance of beneficiary information regarding persons assisted under this Agreement, including name, address, family size, social security number, race, sex, income, marital status, and whether the assisted person(s) is elderly, female head-of-household, handicapped, American Indian or Alaska Native, Hispanic, Caucasian, Black or African American, Asian, or Native Hawaiian or Pacific Islander. The information shall be maintained for each housing unit and person(s) or families assisted under this Agreement. Owner shall submit the beneficiary information to ADFA upon request.
- R. Owner shall comply with Executive Order 11063, as amended by Executive Order 12259, and shall not discriminate against persons on the basis of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital or familial status, or status with regard to public assistance. Owner shall maintain records and documentation to evidence compliance with this requirement. Owner shall take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Owner agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.

- S. Owner agrees that funds received under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization.
- T. Owner shall not further encumber the Development pursuant to this Agreement without the prior written approval of ADFA.

VIII. RECORDKEEPING and REPORTS

- A. Owner shall provide all information requested by ADFA in a timely manner to enable ADFA to meet all reporting requirements imposed by HUD, any other United States government agency or entity, or the State of Arkansas.
- B. Beginning with the first calendar month in which the Agreement is executed, the Owner will submit the payroll reports and records described in **Section VI.J.2.b**, above, to ADFA no later than 10 business days following the last day of each calendar month. Owner must submit such monthly payroll reports and records to ADFA through the month in which the Development is placed in service.

Beginning with the first calendar month in which this Agreement is executed, Owner must submit a monthly report due to ADFA on the 1st business day following the end of each calendar month. Owner must submit such monthly reports to ADFA through the month in which the Development is placed in service. At such time, the reporting frequency and content may be revised by ADFA. The monthly report shall be in the form attached hereto as ***“Exhibit F.”***

- C. Owner will ensure that all records required under this Agreement are retained for a period of five (5) years after the applicable required period of affordability has expired. When requested, Owner shall furnish, and cause all its subcontractors to furnish, all reports and information required hereunder, and will permit access to its books, records, and accounts, by ADFA, the Department of Housing and Urban Development or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the statutes, rules, regulations, and provisions stated herein.

IX. DEBARMENT AND SUSPENSION

Owner certifies that the Owner and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from covered transactions by any federal department or agency;
- B. Have not within a three (3) year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, fraud, making false statement(s) or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated above, and;
- D. Have not within a three (3) year period preceding this Agreement had one (1) or more public

transactions (Federal, State or local) terminated for cause or default.

X. REMEDIES ON DEFAULT

Owner agrees that in the event that ADFA determines that a breach of this Agreement has occurred, including but not limited to Owner expending TCAP Funds for ineligible costs, failing to complete the Development, or failing to ensure that the Development meets all requirements of Section 42 and this Agreement, ADFA may exercise any and all of its rights and remedies under this Agreement, state and federal law, and all applicable regulations, including the right to terminate this Agreement and recapture or terminate any and all TCAP Funds allocated under this Agreement. More specifically:

- A. If ADFA determines that Owner has materially failed to comply with any provision of this Agreement, or with any rules, statutes, regulations, or ordinances, ADFA will notify Owner in writing by certified mail, return receipt requested, such Notice of Default to the party designated to receive such Notices in **Section VI** of this Agreement. For purposes of this section, the term materially means "an important or essential term of the Agreement." "Material" necessarily includes but is not limited to any action or inaction by Owner that constitutes a recapture event pursuant to HUD and/or Treasury guidance.
- B. ADFA will allow Owner the opportunity to demonstrate compliance with the Agreement requirements in question. Owner shall offer evidence of such compliance within thirty (30) days from receipt of the written Notice of Default. Any such offered evidence of compliance shall not constitute compliance with the terms and conditions of this Agreement unless ADFA expressly makes a finding in writing that the offered evidence demonstrates compliance with the Agreement requirement(s) in question.
- C. If Owner fails to demonstrate to ADFA that it has fulfilled the requirement(s), ADFA may, in addition to imposing any of the special conditions specified in [24 CFR 84.14](#), take any and all of the following "corrective or remedial" actions, or may terminate this Agreement whether or not it has exercised its right to take any of the corrective or remedial actions set forth herein, including but not limited to:
 - a. Withholding further disbursements pending correction of the deficiency by Owner.
 - b. Specific activities required by ADFA to correct the deficiency and to be accomplished by Owner in a specified time frame.
 - c. Canceling or revising activities may affect the performance of this Agreement and create a deficiency in the original Agreement and may be grounds for making this contract void, and trigger remedies available to ADFA under this Agreement and/or TCAP Program regulations.
 - d. Reprogramming any balance of TCAP Funds made available under this Agreement from deficient activities, or any activity funded under this Agreement, to other eligible activities.
 - e. Suspension of TCAP fund disbursements for any activities funded under this Agreement and subsequent termination of this Agreement in its entirety.
 - f. Termination of this Agreement in its entirety and requiring that the Owner repay to ADFA any and all TCAP Funds received by Owner under this Agreement.
 - g. Removing Owner, principals of Owner, members of Owner's development team, and/or other individuals and entities, at the discretion of ADFA, from future

- participation in programs administered by ADFA.
- h. Requiring that Owner terminate the management company. Owner agrees to hold ADFA harmless for any damages or claim for damages caused or alleged to have been caused by this requirement. In the event that equity from the sale of tax credits is a source of funds for the Development that is equal to or greater than one-third (1/3) of the total Development costs and such credits are owned by an entity other than the Owner, any member of Owner's Development team, or any entity affiliated with Owner, the equity contributor must consent in writing to ADFA's election to exercise this right.
 - i. Requiring that Owner engage a management company selected by ADFA to provide management services for the Development. In the event that equity from the sale of tax credits is a source of funds for the Development that is equal to or greater than one-third (1/3) of the total Development costs and such credits are owned by an entity other than the Owner, any member of Owner's Development team, or any entity affiliated with Owner, the equity contributor must consent in writing to ADFA's election to exercise this right.
 - j. Taking any and all other actions that are available to ADFA under this Agreement, all other relevant contractual agreements, applicable regulations, federal law and state law.
- D. ADFA is not required to take any corrective or remedial action before terminating this Agreement. The Notice of Default constitutes prior written notice to the Owner under Section X. It is within ADFA's sole discretion whether to require corrective or remedial actions, or to terminate the Agreement without requiring, or providing Owner the opportunity to take, corrective or remedial actions.
- E. ADFA is not required to take any corrective or remedial action before pursuing all legal and equitable rights to which it is entitled.
- F. In the event Owner dissolves the organization, ceases to exist, sells its ownership interest, sells substantially all assets of Owner, or otherwise becomes unable for any reason to fulfill its obligations under this Agreement, Owner must fully repay to ADFA all TCAP Funds disbursed to Owner pursuant to this Agreement unless ADFA has agreed otherwise, in writing.
- G. Notwithstanding any other provision of this Agreement, should there be any fraud, misrepresentation, embezzlement, or any other criminal activity associated with this Development or Owner, ADFA may pursue all legal and equitable remedies available to it against the Owner and the Development.
- H. Any decision regarding corrective or remedial actions, termination, legal or equitable remedies or actions to be taken regarding this Agreement or Development shall be at the sole option and discretion of ADFA. A decision by ADFA to pursue one course of action shall not constitute a waiver of any other course of action ADFA may pursue under this Section X, Remedies on Default.
- I. In the event that legal action is necessary to enforce any provision of this Agreement, the prevailing party shall be entitled to recover its attorney's fees and costs.

XI. TERMINATION

ADFA may terminate this Agreement upon thirty (30) days prior written notice to the Owner contact person indicated in Section VI of this Agreement. The notice of termination shall set forth the reasons for such termination, the effective date of termination, and in the case of partial termination, the portion of the award to be terminated. However, in the case of partial termination, if ADFA, in its sole discretion, determines that the remaining portion of the funding provided under this Agreement will not accomplish the purposes for which the award was made, the ADFA may terminate the award in its entirety.

XII. MISCELLANEOUS PROVISIONS

- A. The officials who executed this Agreement hereby represent and warrant that they have full and complete authority to act on behalf of ADFA and Owner, respectively, and that their signatures below, the terms and provisions hereof, constitute valid and enforceable obligations of each.
- B. This Agreement shall be executed in the original, and any number of executed copies. Any copy of this Agreement so executed shall be deemed an original and shall be deemed authentic for any other use.
- C. The parties may amend or modify this Agreement at any time, provided that such amendment(s) or modification(s) make specific reference to this Agreement, and are executed in writing by a duly authorized representative of both parties. Such amendment(s) or modification(s) shall not invalidate this Agreement, nor relieve or release the parties from their obligations under this Agreement.
- D. The terms and conditions of this Agreement shall be binding upon the parties hereto, their respective successors and assignees.
- E. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer and employee between the parties. Owner shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. Further, nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of principal and agent between the parties.
- F. Owner shall not assign or transfer any interest in this Agreement without the prior written approval of ADFA.
- J. This Agreement shall be construed according to the laws of the State of Arkansas.
- K. Any and all suits at law or equity arising out of this Agreement must be filed in the Circuit Court of Pulaski County, Arkansas. By execution of this Agreement, Owner consents to the personal jurisdiction of Arkansas for all matters arising from the application for TCAP funding, award of TCAP funding, this Agreement, construction of the Development and operations of the Development.
- L. Should any part, term or provision of this Agreement, or portions thereof, be determined by a court of competent jurisdiction to be illegal, void or unenforceable, the validity of the remaining portions or provisions shall not be affected thereby.

- M. The use of the singular or plural is for the parties' convenience only and shall not be construed as limiting or expanding any authority, duty, or liability.
- N. Owner hereby waives, to the fullest extent permitted by law, the right to trial by jury in any action, proceeding or counterclaim, whether in contract, tort or otherwise relating directly or indirectly to this Agreement, the associated Mortgage, Note and Land Use Restriction and all other related documents, representations and agreements, for any acts or omissions of Owner, its officers, members, partners, employees, directors and agents.
- O. Owner shall not engage in any business other than owning and operating the Development.
- P. Owner shall not file or consent to a petition of bankruptcy, insolvency, liquidation or reorganization, or make assignment for the benefit of creditors without providing actual notice to ADFA and obtaining ADFA's written consent to any action prior to Owner taking or agreeing to such action.

XIII. INDEMNITY

Owner agrees that it shall indemnify and hold harmless ADFA, its officers, agents, directors and employees against any and all claims brought against ADFA, its officers, agents, directors and employees that arise from this Agreement including but not limited to:

- A. Any and all claims or losses for services rendered by any subcontractor, person or firm performing or supplying services, materials or supplies in connection with the performance of this Agreement.
- B. Any claims or losses resulting to any person or firm injured or damaged by the erroneous, willful or negligent acts or omissions, including disregard of Federal, State, and local statutes or regulations, by Owner, its officers, employees or subcontractors in the performance of this Agreement.
- C. Any and all claims or losses arising from the Development's award of tax credits, award of TCAP funding, construction and operation.
- D. Any and all claims or losses arising from the award and distribution of TCAP Funds to Owner for which the Department of Housing and Urban Development seeks repayment, damages or other compensation from ADFA.
- E. Owner agrees to pay all reasonable attorneys' fees and costs incurred by ADFA in defending any and all claims arising out of this Agreement brought against ADFA by any person, entity or governmental body.

XIV. RECOURSE

Notwithstanding any of the foregoing provisions, it is expressly understood by the parties hereto that none of the partners, general or limited, of the Owner or members of the Owner shall have any personal liability for breach of this Agreement *except as set forth herein*:

The managing member of Owner, General Partner of Owner, Developer, managing member of Developer, or other person or entity acceptable to ADFA, shall be directly liable up to the total

amount of TCAP Funds awarded to Owner and disbursed under this Agreement. **The execution of a Guaranty for such amount is a condition precedent to the effectiveness of this Agreement.** A copy of such Guaranty shall be included hereto and incorporated herein by reference as if set forth word for word.

The above provisions are applicable to liability for breach of this Agreement. ADFA retains the power and right to pursue all persons and entities for any and all misrepresentations and other acts and omissions arising from the application for TCAP funding, award of TCAP funding, construction of the Development and operations of the Development.

XV. TIME OF PERFORMANCE

Owner shall commence construction [rehabilitation] of the Development within one-hundred twenty (120) days of the date that ADFA issues the Notice to Proceed. In the event that construction does not begin within said time period, ADFA may, at its sole discretion, terminate this Agreement. Any extension of time permitted by ADFA shall not be considered a waiver of this time of performance requirement and shall not affect ADFA's right to terminate this Agreement in any way except as set forth in writing and signed by the President of ADFA.

Owner shall complete construction and place the Development in service by the earlier of the time required under Section 42 of the IRC or December 31, 2011. Owner agrees to fully cooperate with all construction monitoring by a third-party or ADFA personnel. In the event that Owner fails to comply with the construction schedule, attached hereto as ***Exhibit B*** and incorporated herein by reference, ADFA shall have the right to terminate this Agreement and recover all TCAP Funds previously disbursed to Owner.

XVI. TERM OF AGREEMENT

This Agreement shall be in full force and effect from the date first written above and shall remain in force for the full period of affordability applicable to the Development.

XVII. SURVIVAL

This Agreement shall not be considered merged upon the closing of the Mortgage loan, and all terms and conditions set forth herein, whether or not set forth in the Mortgage, shall survive the closing of the Mortgage loan.

ADFA
Arkansas Development Finance Authority

Owner:

By: _____
Mac Dodson

By:

Its: General Partner

Its: President

Date: _____
Federal I.D Number: